

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANA BOZIAN,

Plaintiff,

v.

Case No. 2:20-cv-365-JLB-NPM

CIRCLE K STORES INC.,

Defendant.

ORDER

Before the Court is Plaintiff’s unopposed motion to reopen discovery (Doc. 34). After the close of discovery, Plaintiff’s orthopedic surgeon—who was previously identified as a Rule 26(a)(2) witness—suffered a stroke and is currently in a comma. *Id.* at 2. Thus, this expert witness almost certainly cannot testify at trial. *Id.* As such, Plaintiff seeks to reopen discovery for the limited purpose of finding a new expert, serving a new expert report, and providing Defendant the opportunity to depose this new expert.

District courts are required to enter a scheduling order that limits the time for discovery. FED. R. CIV. P. 16(b)(3). When a deadline appears in a scheduling order and a motion for more time is filed, “Rule 16 is the proper guide for determining whether a party’s delay may be excused.” *Destra v. Demings*, 725 F. App’x 855, 859 (11th Cir. 2018). Under Rule 16(b)(4), “a schedule may be modified only for good

cause and with the judge's consent." FED. R. CIV. P. 16(b)(4). Under this standard, the party requesting the extension demonstrates "good cause" only if, despite its diligence, the party cannot meet the deadline. *See* FED. R. CIV. P. 16, 1983 Advisory Committee Notes; *S. Grouts & Mortars, Inc. v. 3M Co.*, 575 F.3d 1235, 1241 (11th Cir. 2009) (citing *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998)).

The circumstances here supply good cause for the requested relief. Accordingly, by **December 15, 2021**, Plaintiff will serve a Rule 26(a)(2)(B) report for its new expert if not previously provided or otherwise agreed, service of an expert report by any party must include the disclosure of at least three dates of availability for the expert to be deposed no sooner than one week and no later than three weeks after service of the expert's report. The parties are encouraged to discuss these scheduling issues well before the service of such reports and to place holds on dates as appropriate. And by **January 17, 2022**, Defendant may depose Plaintiff's new expert. An amended CMSO will be entered separately.

ORDERED in Fort Myers, Florida on November 4, 2021.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE